IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.3116 OF 2005

Sunil Tulsidas Shetge .. ..Petitioner

Versus

Mohammed Elysin N.Dinath, ..Respondent

WITH

WRIT PETITION NO.3117 OF 2005

Amol Madhukar Shetge .. ..Petitioner

Versus

Mohammed Elysin N.Dinath .. ..Respondent

Mr.D.D.Belosay for petitioners in both petition

Mrs.Ranjana Parikh for respondent in both petition

CORAM : P.V.KAKADE, J.

DATE : 21ST MARCH, 2006.

P.C.:

1. Both these writ petitions can conveniently be disposed of by this common order as the petitioners in both the petitions have filed these petitions against the order passed by the lower appellate court, though separately, in respect of the same property and the cause of action also appears to be the same. The respondent is also the same and therefore, for the sake of convenience the order is being issued on the similar set of facts.

2. The petitioners are the obstructionists in execution proceeding wherein Decree was passed in R.A.E Suit No.938/1652 of 1999 and R.A.E. Suit No.45/74/1999 whereby the appeals of the petitioners were dismissed and order passed by the trial court making the notices absolute came to be confirmed.

3. The Respondent - decree holder took out the

notices for execution of decree which was passed on 2.12.2002 in the said suits with submission that they had taken out misc. notices before execution of the decree and defendant did not contest the same. Thereafter, he took out execution proceeding and attempted to execute the decree on 12.2.2003 at which time the present petitioners obstructed and objected the execution of the decree on various grounds and hence the obstructionist notices had to be filed for removal of the obstructionists and seeking possession.

4. The obstructionists came with the case that one Madhukar Shetge, originally who was the uncle of the parties and later on adoptive father, had obtained the suit premises from one Vasudeo Bhide in the year 1968 and since then was residing there with family members. According to the petitioners, he was residing continuously till his death and continued to reside there. Their adoptive father Madhukar Shetge had been paying rent directly to the landlord in the name of the defendant. The defendant company was not occupying the suit premises. The obstructionists furnished Ration Card, Passport, Bank Account Pass Book, Radio Licence as well as correspondence towards documentary evidence in

order to show the exclusive possession of their father on the suit premises. They also possessed the rent receipts and correspondence between the landlord and the defendant. It was further contended that the suit premises was in exclusive possession of Madhukar Shetge and later on in their own possession within the knowledge of the plaintiff but he did not join them as defendant to the suit and obtained ex-parte decree. The petitioners also claimed status of protected tenant under the provisions of the Bombay Rent Act with contention that they were protected as deemed tenant and therefore, they were entitled for protection under the provisions of Maharashtra Rent Control Act and on such and other grounds the execution proceeding was sought to be dismissed.

. The respondent-plaintiff contested the claim, inter alia, submitting that all the allegations made by the petitioners were false and hence sought possession of the suit premises removing the petitioners from the suit property, who were allegedly ranked trespassers to the suit property.

. The trial judge after hearing both the parties

and on the basis of available evidence came to the conclusion that the obstructionists - petitioners in both the matters failed to prove that their uncle Madhukar Shetge was a tenant in respect of the suit premises since the year 1968. It was further held that the petitioners failed to prove that at the time of death of Madhukar Shetge they were residing with him in the suit premises as a member of family. It was further held that the petitioners failed to prove that they had alleged independent right of tenancy in respect of the suit premises and as such the directions were issued to the effect that the obstructionists failed to prove their case and notices of the respondent were made absolute.

. The Appeals were carried to the lower appellate court, who after hearing both the parties and on the basis of available evidence on record concurred with the findings recorded by the lower court and dismissed the appeals, hence the present petition.

5. At the outset, it may be noted that perusal of the judgments of both the courts below no doubt whatsoever that they have appreciated the entire

evidence in proper perspective and therefore, it would brook no interference.

6. The learned counsel for the petitioners in both the matters sought to put reliance on the document of Ration Card, which was also presented for my perusal. Both the courts below have concurred with the finding that the submissions made on behalf of the petitioners that the Ration Card wherein the names of the petitioners are found was issued in the year 1965, and found that it was in fact issued in the year 1976. The perusal of the original document also supports the finding recorded by the courts below and therefore, there is absolutely no reason to hold that Ration Card issued in the year 1965 in order to show that the petitioners were treated as family members of the deceased uncle Madhukar and were residing in the suit premises since the year 1965, as contended. Moreover, it is to be noted that in Writ Petition No.3117 of 2005 the petitioner’s cross examination shows that he has candidly admitted in his evidence, recorded in September, 2003, that the Ration Card in question was issued in the month of March 1976 and at that time his name was not in Ration Card at all. This admission

further supports the respondents case in order to hold that petitioners' obstruction is without any legal cause and as such is devoid of any merits.

7. In the result, I am satisfied that the reasoning adopted and finding recorded by both the courts below holding that the petitioners have no case and have no reason to obstruct the execution of the proceeding, appears to be just, legal and proper and therefore, both the petitions deserves to be dismissed and stands dismissed with no order as to costs.

8. At this stage the learned counsel for the petitioners, in both the petition, requested for time for vacating the suit premises. In view of the facts and circumstances, the plea is rejected.